

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEROME DAVIS,	)	
	)	
Plaintiff,	)	8:06CV588
	)	
v.	)	
	)	
AT&T, et al.,	)	MEMORANDUM AND ORDER
	)	
Defendants.	)	
_____	)	

This matter is before the court on the notice of appeal (Filing No. 8) filed by the plaintiff, Jerome Davis, a prisoner, and the motion to proceed in forma pauperis ("IFP") (Filing No. 9) on appeal. The plaintiff appeals the memorandum opinion and order and judgment (Filing Nos. 6 and 7) in which the Court dismissed his complaint as frivolous and for failure to state a claim on which relief may be granted.

The Eighth Circuit Court of Appeals has stated that district courts should continue to certify pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a) whether an appeal by an appellant who wishes to proceed IFP on appeal is or is not taken in good faith. *Henderson v. Norris*, 129 F.3d 481, 485 (8<sup>th</sup> Cir. 1997). If the district court concludes that such an appeal is not taken in good faith, it shall, pursuant to Fed. R. App. P. 24(a), state in writing the reasons for the denial. *Id.*

To proceed IFP on appeal, a petitioner must show both "a financial inability to pay the required fees and the existence

of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812 (10<sup>th</sup> Cir. 1997). The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.* Thus, on the basis of the record and for the reasons stated in the Court's memorandum opinion, this appeal is not taken in good faith and the motion to proceed IFP on appeal will be denied.

If a district court determines that an appeal is not taken in good faith or that the individual is not otherwise entitled to pauper status, the Clerk of the district court must serve notice of the district court's decision on the parties and the Court of Appeals. Fed. R. App. P. 24(a)(4). The appellant then has thirty (30) days following service of the Clerk's notice to file a motion in the Court of Appeals for leave to proceed IFP on appeal. Fed. R. App. P. 24(a)(5). Such a motion in the Court of Appeals must be accompanied by a copy of the affidavit filed in the district court, or by a new affidavit if none was previously filed, and by a copy of the statement of reasons given by the district court for denial of IFP status on appeal. *Id.* If the Eighth Circuit grants the renewed IFP motion, the plaintiff would not be relieved of the \$455 appellate filing fee but would be permitted to pay the fee in installments.

Accordingly,

IT IS ORDERED:

1) That plaintiff's motion to proceed in forma pauperis on appeal is denied;

2) That the Clerk of Court shall send a copy of this Memorandum and Order to the parties and the Eighth Circuit Court of Appeals as the notice required by Fed. R. App. P. 24(a)(4), and the Clerk shall process the appeal to the Eighth Circuit; and

3) That the plaintiff may file a motion in the Court of Appeals for leave to proceed IFP on appeal.

DATED this 10th day of October, 2006.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court